



Senate

General Assembly

File No. 603

January Session, 2005

Substitute Senate Bill No. 948

Senate, May 2, 2005

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

**AN ACT CONCERNING THE FAILURE OF A MUNICIPALITY TO
OBTAIN A BOND FROM CERTAIN CONTRACTORS, PREPAID HOME
HEATING OIL CONTRACTS AND HEAT AND UTILITY SURCHARGE
CLAUSES IN RESIDENTIAL LEASES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-41 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Each contract exceeding fifty thousand dollars in amount for the
4 construction, alteration or repair of any public building or public work
5 of the state or of any subdivision thereof shall include a provision that
6 the person to perform the contract shall furnish to the state or the
7 subdivision on or before the award date, a bond in the amount of the
8 contract which shall be binding upon the award of the contract to that
9 person, with a surety or sureties satisfactory to the officer awarding
10 the contract, for the protection of persons supplying labor or materials
11 in the prosecution of the work provided for in the contract for the use
12 of each such person, provided no such bond shall be required to be

13 furnished (1) in relation to any general bid in which the total estimated
14 cost of labor and materials under the contract with respect to which
15 such general bid is submitted is less than fifty thousand dollars, (2) in
16 relation to any sub-bid in which the total estimated cost of labor and
17 materials under the contract with respect to which such sub-bid is
18 submitted is less than fifty thousand dollars, or (3) in relation to any
19 general bid or sub-bid submitted by a consultant, as defined in section
20 4b-55. Any such bond furnished shall have as principal the name of the
21 person awarded the contract.

22 (b) Nothing in this section or sections 49-41a to 49-43, inclusive,
23 shall be construed to limit the authority of any contracting officer to
24 require a performance bond or other security in addition to the bond
25 referred to in subsection (a) of this section, except that no such officer
26 shall require a performance bond in relation to any general bid in
27 which the total estimated cost of labor and materials under the contract
28 with respect to which such general bid is submitted is less than
29 twenty-five thousand dollars or in relation to any sub-bid in which the
30 total estimated cost of labor and materials under the contract with
31 respect to which such sub-bid is submitted is less than fifty thousand
32 dollars.

33 (c) No contract for the construction, alteration or repair of any
34 public building or public work of the state or of any subdivision
35 thereof that requires a person to supply the state or subdivision with a
36 bond may include a provision that requires the person to obtain the
37 bond from a specific surety, agent, broker or producer. No contracting
38 officer may require that a bond be obtained from a specific surety,
39 agent, broker or producer.

40 (d) Any political subdivision of the state that enters into a contract
41 described in subsection (a) of this section and that fails to obtain
42 delivery from the contractor of the bond required by this section shall,
43 upon demand of any person who has not been paid by the contractor
44 for labor or materials supplied in the performance of the work under
45 such contract, remit payment for such labor or materials. In the event

46 such political subdivision of the state fails to remit such payment, any
47 person who provided such labor or materials in the performance of the
48 work under the contract shall have the same legal right of action
49 against such political subdivision of the state as such person would
50 have had against a surety under the provisions of section 49-42.
51 Nothing in this section shall be construed to extend liability to the state
52 for any person's right to payment or constitute a waiver of the state's
53 sovereign immunity.

54 Sec. 2. Section 16a-23n of the general statutes is repealed and the
55 following is substituted in lieu thereof (*Effective from passage*):

56 (a) A contract for the retail sale of home heating oil that offers a
57 guaranteed price plan, including fixed price contracts and any other
58 similar terms, shall be in writing and the terms and conditions of such
59 price plans shall be disclosed. Such disclosure shall be in plain
60 language and shall immediately follow the language concerning the
61 price or service that could be affected and shall be printed in no less
62 than twelve-point boldface type of uniform font.

63 (b) A home heating oil dealer that advertises a price shall offer said
64 price for a period of no less than twenty-four hours or until the next
65 advertised price is publicized, whichever occurs first.

66 (c) No home heating oil dealer shall enter into a prepaid home
67 heating oil contract unless such dealer has either: (1) Obtained and
68 maintained heating oil futures contracts or other similar commitments
69 that allow such dealer to purchase, at a fixed price, heating oil in an
70 amount not less than seventy-five per cent of the maximum number of
71 gallons that such dealer is committed to deliver pursuant to all prepaid
72 home heating oil contracts entered into by such dealer, or (2) obtained
73 and maintained a surety bond in an amount not less than fifty per cent
74 of the total amount of funds paid to the dealer by consumers pursuant
75 to prepaid home heating oil contracts. Such dealer shall maintain the
76 amount of futures contracts or the amount of the surety bond required
77 by this subsection for the period of time for which such prepaid home
78 heating oil contracts are effective, except that the amount of such

79 futures contracts or surety bond may be reduced during such period of
80 time to reflect any amount of home heating oil already delivered to
81 and paid for by the consumer.

82 (d) No prepaid home heating oil contract shall require any
83 consumer commitment to purchase home heating oil pursuant to the
84 terms of such contract for a period of more than eighteen months.

85 (e) Any prepaid home heating oil contract shall indicate: (1) The
86 amount of funds paid by the consumer to the dealer under such
87 contract, (2) the maximum number of gallons of home heating oil
88 committed by the dealer for delivery to the consumer pursuant to such
89 contract, and (3) that performance of such prepaid home heating oil
90 contract is secured by one of the two options described in subsection
91 (c) of this section. Any such contract shall provide that the contract
92 price of any undelivered home heating oil owed to the consumer
93 under the contract, on the end date of such contract, shall be
94 reimbursed to the consumer not later than thirty days after the end
95 date of such contract unless the parties to such contract agree
96 otherwise.

97 Sec. 3. Section 16a-23p of the general statutes is repealed and the
98 following is substituted in lieu thereof (*Effective from passage*):

99 The Department of Consumer Protection may suspend or revoke
100 any registration issued under section 16a-23m if the holder of such
101 registration is grossly incompetent, engages in malpractice or unethical
102 conduct or knowingly makes false, misleading or deceptive
103 representations regarding such holder's work, [or] violates any
104 provision of section 16a-23n, as amended by this act, or violates any
105 regulations adopted under section 16a-23q. Before any such
106 registration is suspended or revoked, such holder shall be given notice
107 and opportunity for hearing as provided in regulations adopted by the
108 Commissioner of Consumer Protection in accordance with the
109 provisions of chapter 54.

110 Sec. 4. Section 16a-23r of the general statutes is repealed and the

111 following is substituted in lieu thereof (*Effective from passage*):

112 (a) A violation of the provisions of section 16a-23m, 16a-23n, as
113 amended by this act, or 16a-23o constitutes an unfair trade practice
114 under subsection (a) of section 42-110b.

115 (b) In accordance with the provisions of section 53a-11, any home
116 heating oil dealer who knowingly violates the provisions of subsection
117 (c) of section 16a-23n, as amended by this act, shall have committed a
118 class A misdemeanor.

119 Sec. 5. Section 47a-4 of the general statutes is repealed and the
120 following is substituted in lieu thereof (*Effective October 1, 2005*):

121 (a) A rental agreement shall not provide that the tenant: (1) Agrees
122 to waive or forfeit rights or remedies under this chapter and sections
123 47a-21, 47a-23 to 47a-23b, inclusive, 47a-26 to 47a-26g, inclusive, 47a-35
124 to 47a-35b, inclusive, 47a-41a, 47a-43 and 47a-46, or under any section
125 of the general statutes or any municipal ordinance unless such section
126 or ordinance expressly states that such rights may be waived; (2)
127 authorizes the landlord to confess judgment on a claim arising out of
128 the rental agreement; (3) agrees to the exculpation or limitation of any
129 liability of the landlord arising under law or to indemnify the landlord
130 for that liability or the costs connected therewith; (4) agrees to waive
131 his right to the interest on the security deposit pursuant to section 47a-
132 21; (5) agrees to permit the landlord to dispossess him without resort
133 to court order; (6) consents to the distraint of his property for rent; (7)
134 agrees to pay the landlord's attorney's fees in excess of fifteen per cent
135 of any judgment against the tenant in any action in which money
136 damages are awarded; [or] (8) agrees to pay a late charge prior to the
137 expiration of the grace period set forth in section 47a-15a or to pay rent
138 in a reduced amount if such rent is paid prior to the expiration of such
139 grace period; or (9) agrees to pay a heat or utilities surcharge if heat or
140 utilities is included in the rental agreement.

141 (b) A provision prohibited by subsection (a) of this section included
142 in a rental agreement is unenforceable.

| | | |
|---|------------------------|---------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>from passage</i> | 49-41 |
| Sec. 2 | <i>from passage</i> | 16a-23n |
| Sec. 3 | <i>from passage</i> | 16a-23p |
| Sec. 4 | <i>from passage</i> | 16a-23r |
| Sec. 5 | <i>October 1, 2005</i> | 47a-4 |

Statement of Legislative Commissioners:

In section 2, "security bond" was changed to "surety bond" for statutory consistency.

GL *Joint Favorable C/R*

JUD

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 06 \$ | FY 07 \$ |
|---|---------------------------|----------------------|----------------------|
| Judicial Dept.; Correction, Dept. | GF - Cost | Potential | Potential |
| Judicial Dept. | GF - Revenue Gain | Less than 50,000 | Less than 50,000 |
| Consumer Protection, Dept.; Attorney General | Various - Revenue Gain | Potential Minimal | Potential Minimal |

Note: GF=General Fund

Municipal Impact:

| Municipalities | Effect | FY 06 \$ | FY 07 \$ |
|------------------------|--------|-----------|-----------|
| Various Municipalities | Cost | Potential | Potential |

Explanation

Section 4 of the bill makes it a crime, designated as a class A misdemeanor, for any home heating oil dealer to knowingly violate the bill's requirement to obtain and maintain future contracts or a security bond. An offense is subject to a penalty of up to one year in prison, a fine of up to \$2,000, or both. It is anticipated that few offenses would be prosecuted each year and, consequently, any revenue gain from criminal fines under the bill would be minimal. To the extent that offenders are prosecuted criminally and subsequently convicted or plead guilty, the state could incur a cost associated with incarceration and/or probation supervision in the community. On average, it costs the state \$2,150 to supervise an offender on probation in the community as compared to \$35,040 to incarcerate the offender (note that both figures include fringe benefits).

The bill makes a violation of its provisions an unfair trade practice. Under the Connecticut Unfair Trade Practices Act (CUTPA), the Department of Consumer Protection (DCP) and the Attorney General can impose CUTPA fines. In FY 04, \$18,789 was deposited in the

General Fund as a result of such fines.

In the case of settlements, depending on the negotiation terms, funds are either deposited into the DCP's Consumer Protection Settlement Account or the General Fund. Funds deposited into the Consumer Protection Settlement Account are used only to enhance activities that further consumer protection. In FY 04, \$86,500 in CUTPA fines were deposited into the DCP Consumer Protection Settlement Account. Additionally, in FY 04, \$135,212 in CUTPA fines were deposited into the General Fund as a result of settlements negotiated by the Office of the Attorney General (OAG). The state agencies could accommodate the workload associated with enforcement of the bill without requiring additional resources. To the extent that the bill increases the potential for future violations, the bill could result in a minimal revenue gain to the state.

Section 3 authorizes the Department of Consumer Protection to suspend or revoke a registration for violating the bill's requirements and prohibitions. This has no fiscal impact.

Section 5 could reduce the number of civil cases that the Judicial Department's Housing Session handles by simplifying certain residential lease agreements. Any caseload impact is expected to be negligible, however, and therefore there is no fiscal impact.

Municipal

Section 1 gives a subcontractor recourse against a municipality to collect payment for labor, materials, equipment and/or supplies in cases where: (1) the municipality fails to meet the statutory requirement that a surety bond purchase provision be included in any contract over \$50,000, and (2) the contractor fails to pay the subcontractor. This will result in a cost to any municipality that fails to comply with the surety bond contract requirement in cases where a contractor for the municipality defaults on payment to a subcontractor on the project.

OLR Bill Analysis

sSB 948

AN ACT CONCERNING THE FAILURE OF A MUNICIPALITY TO OBTAIN A BOND FROM CERTAIN CONTRACTORS, PREPAID HOME HEATING OIL CONTRACTS AND HEAT AND UTILITY SURCHARGE CLAUSES IN RESIDENTIAL LEASES**SUMMARY:**

The law requires public works contracts, including those issued by political subdivisions, valued at \$50,000 or more to require the contractor to furnish a payment bond from a surety company. The bill requires a political subdivision that fails to obtain the required bond from its general contractor to pay anyone not paid by the contractor for work or materials supplied under the public works contract. If the political subdivision fails to pay, the bill authorizes the unpaid subcontractor or supplier to sue the political subdivision in the same way that he may sue a surety company for payment (see BACKGROUND). The bill states that it must not be construed to extend liability to the state for anyone's right to be paid or to constitute a waiver of the state's sovereign immunity.

The bill prohibits home heating oil dealers from entering into prepaid contracts with consumers unless the dealers secure the contracts with either a minimum level of heating oil futures contracts or a surety bond of a certain amount. It sets standards for prepaid home heating oil contracts and establishes civil and criminal penalties for violating its provisions.

The bill prohibits residential rental agreements under which heat or utilities are provided from requiring tenants to pay a heat or utilities surcharge.

EFFECTIVE DATE: Upon passage except for the provision affecting rental agreements, which is effective on October 1, 2005.

HOME HEATING OIL CONTRACTS***Futures Contracts and Security Bonds***

The bill allows a dealer to secure prepaid contracts with heating oil futures contracts or similar commitments that allow him to purchase at a fixed price at least 75% of the oil that he commits to providing under all of his prepaid contracts. Alternatively, the bill allows a dealer to secure contracts with a surety bond of at least 50% of the total amount he received from consumers under his prepaid contracts. The future contracts or bonds must be maintained for as long as the prepaid contracts are in force, but the amount may be reduced to reflect deliveries.

Contract Standards

The bill requires the contracts to state (1) the amount the consumer must pay, (2) the maximum number of gallons the dealer is committed to deliver, and (3) that the dealer's ability to fulfill the contract is secured by either futures contracts or a surety bond. It prohibits prepaid home heating oil contracts from committing consumers to purchase oil for longer than 18 months. It requires contracts to provide that the contract price of undelivered heating oil owed on its end date must be reimbursed to the consumer within 30 days of that date, unless the dealer and consumer agree otherwise.

Civil and Criminal Penalties

The law makes it an unfair trade practice for a dealer to fail to use written contracts when offering a guaranteed price plan or to fail to offer advertised prices for a minimum time period. The bill also makes it an unfair trade practice to fail to meet its requirements to secure prepaid home heating oil contracts.

The law requires home heating oil dealers to register with the Department of Consumer Protection (DCP) and authorizes DCP to suspend or revoke a registration after notice and hearing for such things as gross incompetency. The bill also authorizes DCP to suspend or revoke a registration for home heating oil contract or advertising violations.

A home heating oil dealer who knowingly violates the bill's requirement to obtain and maintain futures contracts or a security bond commits a class A misdemeanor, and is subject to a penalty of up to one year in prison, a fine of up to \$2,000, or both.

BACKGROUND

Enforcing a Claim for Payment for Labor or Materials Provided Under a Public Works Contract

A subcontractor or supplier who has not been fully paid by the contractor after 60 days for work or material supplied on a public works project may file a payment claim with the surety company. If the surety has not paid the contractor within 180 days after the requisition for work or material was submitted or, if the work or material was not included in a requisition or estimate, within 180 days after the work was performed or the material supplied, the subcontractor or supplier may file a claim against the surety.

Connecticut Unfair Trade Practices Act

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

COMMITTEE ACTION

General Law Committee

Joint Favorable Change of Reference

Yea 17 Nay 0

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0